

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Bowen Analyst: Darrine Distefano Bill Number: SB 1279  
Related Bills: See Legislative History Telephone: 845-6458 Amended Date: 03/22/2004  
Attorney: Patrick Kusiak Sponsor: \_\_\_\_\_

**SUBJECT:** State Agencies Disclose Any Breach of Security of Data Systems That Contain Personal Information

### SUMMARY

This bill would require a state agency to provide a credit monitoring service to a person whose personal information was or may have been acquired by an unauthorized person due to a breach of security in a state agency's computer system.

This bill also would make changes to the Civil Code with regard to consumer credit reporting agencies. These provisions would not impact the department and are not discussed in this analysis.

### SUMMARY OF AMENDMENTS

The March 22, 2004, amendments:

- Allow a consumer to add a password to his or her credit report. A consumer would have to provide this password to users that request access to the credit report. However, this provision would not apply to specific entities (including the Franchise Tax Board) that request a credit report in order to carryout specified duties.
- Remove the provisions relating to card keys.
- Make various technical changes.

This is the department's first analysis of this bill.

### PURPOSE OF THE BILL

According to the author's office, the purpose of this bill is to safeguard credit status and reports.

### EFFECTIVE/OPERATIVE DATE

This bill would be effective and operative beginning on or after January 1, 2005.

### POSITION

Pending.

### ANALYSIS

Board Position:

_____ S	_____ NA	_____ NP
_____ SA	_____ O	_____ NAR
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Department Director

Date

Gerald H. Goldberg

4/27/04

## FEDERAL/STATE LAW

In October 1998, the federal government passed the Identity Theft and Assumption Deterrence Act of 1998 (Identity Theft Act). The Identity Theft Act makes it a crime for knowingly transferring or using the identity of another person with intent to commit or aid certain unlawful activities.

Current state law requires a state agency to notify a resident of California in the event their personal information has been acquired by an unauthorized person due to a breach of security of that agency's computer system. A "breach of the security of the system" is the unauthorized acquisition of computerized data that compromises the security, confidentiality, or integrity of personal information. However, an employee or agent of an agency is authorized to acquire personal information to perform his or her work duties.

Current state law defines "personal information" as a person's first name or first initial and last name, in combination with one or more of the following data elements when either the name or the data elements are not encrypted: i) social security number; ii) driver's license number or California Identification Card number; or iii) account number, credit card number, or debit card number along with the required security code, access code, or password. Personal information does not include information that is legally made available to the general public from federal, state, or local government records.

Current state law requires notification to be made in the most expedient time possible and without unreasonable delay. If the agency maintains computerized data, but does not own the data, the agency must notify the owner or licensee of the information of the breach immediately following discovery. State law requires notification to be made by any of the following methods: written, electronic, or substitute notice.

Current state law allows any agency that maintains its own notification procedures to be in compliance. Persons must be notified in accordance with those procedures and those procedures must be consistent with the timing requirements of current law.

## THIS BILL

This bill would require a state agency to provide two years of credit monitoring service without charge to a resident of California whose personal information was or was reasonably believed to have been acquired by an unauthorized person due to a breach of security of that agency's information data system.

This bill would define "credit monitoring service" as an on-demand service for a consumer to electronically access the information in his or her credit report. This service would also provide regular email notification to the consumer of changes to his or her credit report.

This bill would expand the types of data that would be protected from unauthorized acquisition by removing the term "computerized" to include all types of data systems that contain personal information owned or licensed by a state agency.

This bill would also repeal duplicate provisions of the current law.

## IMPLEMENTATION CONSIDERATIONS

This bill is expanding the types of data that would be protected from unauthorized acquisition to include paper documents. Franchise Tax Board (FTB) handles paper documents such as tax returns and personnel documents that contain personal information. FTB monitors access and use of paper documents under a manual process and notifies the affected person(s) should their information be accessed or disclosed to an unauthorized person. However, under this bill, the department would need to develop additional criteria for notification of breaches involving paper documents.

## **LEGISLATIVE HISTORY**

SB 25 (Bowen, Ch. 907, Stat. 2003) limits the use of social security numbers as personal identifying numbers and also made changes to the Civil Code with regard to consumer credit reporting agencies.

AB 700 (Simitian, Ch. 1054, Stat. 2002) requires a state agency to notify residents of California in the event their personal information has been acquired by an unauthorized person due to a breach of security of that agency's computer system.

SB 1386 (Peace, Ch. 915, Stat. 2002) was identical to AB 700.

SB 1365 (Murray, 1999/2000) would have created the "Identity Theft Victim's Protection Act," which would have made it a felony or misdemeanor to intentionally disclose personal information about a California resident to a third party for direct marketing purposes. This bill failed passage from the Senate Committee on Public Safety.

## **OTHER STATES' INFORMATION**

Review of statutes for *Illinois*, *Massachusetts*, *Michigan*, and *Minnesota* found laws similar to the federal laws for unauthorized inspection or unwarranted disclosure of personal information. However, it does not appear that agencies in these states provide a credit monitoring service for individuals when a breach of a state agency's database has occurred.

These states were selected due to their similarities to California's economy, business entity types, and tax laws.

## **FISCAL IMPACT**

This bill would require FTB to provide a credit monitoring system for personal information that was or may have been acquired due to a breach in FTB's data system. Since the department is responsible for maintaining personal and corporate income tax information on either paper or on a data system, depending on the type of breach, several million records could be affected. The credit service bureaus (Experian, TransUnion, and Equifax) charge \$80 per person per year for credit monitoring. This bill would require two years of credit monitoring, so the department could be charged \$160 (\$80 x 2 years = \$160) per person. Therefore, if a breach of the entire Taxpayer Information System occurred (39,868,215 accounts), department costs could be as high as \$6,378,914,400 (39,868,215 accounts X \$160). If the credit services bureaus were to provide a volume discount of 50%, costs would be approximately \$3,189,457,200 (6,378,914,400 divided by 2). No funding has been identified in the bill for these possible costs.

## **ECONOMIC IMPACT**

This bill would not impact the state's income tax revenue.

## **POLICY CONCERNS**

This bill would provide a benefit for California residents that would not be provided to nonresidents. Thus, this bill would provide differing treatment based solely on residency. Restrictions based on residence of a taxpayer have been found to be unconstitutional.

## **LEGISLATIVE STAFF CONTACT**

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